

**State of Montana  
COAL LEASE**

DS-459  
Amended 12/21/2009

No. C-1109-10

THIS LEASE is made and entered into between the State of Montana, by and through its lawfully qualified and acting Board of Land Commissioners, hereinafter referred to as "Lessor", and

Ark Land Company  
1 City Place Drive, Suite 300  
St. Louis, MO 63141

hereinafter referred to as "Lessee", under and pursuant to the authority granted Lessor by the terms and provisions of Title 77, Chapter 3, Part 3, MCA, and all acts amendatory thereof and supplementary thereto, and all rules adopted pursuant thereto.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

**1. GRANTING CLAUSE.** The Lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the Lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, and for the reclamation thereafter, all the lands herein described as follows:

Land Located in: Township 4 South, Range 45 East County: Powder River  
Description of land: Section 10: E½, E½W½

Total number of acres, more or less, 480.00, belonging to Common Schools Grant.

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

**2. EFFECTIVE DATE AND TERM.** This Lease takes effect on March 18, 2010 and is granted for a primary term of ten (10) years and so long thereafter as coal is produced from such lands in commercial quantities, subject to all of the terms and conditions herein set forth. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under Section 82-4-221, MCA, or in a mine site location permit issued under Section 82-4-122, MCA, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

**3. LEASE EXTENSION.** The Board of Land Commissioners may grant reasonable extensions of the primary term of this Lease upon a showing that Lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this Lease or is threatened with substantial economic loss due to litigation regarding this Lease or another lease in the same strip mine permit or mine site location permit held by the Lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

**4. RIGHTS RESERVED.** Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease; provided, however, that Lessor hereby agrees that subsequent sales, leases or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this Lease and shall not interfere with the Lessee's possession or rights hereunder.

**5. BOND.** Lessee shall immediately upon the execution of this Lease furnish a surety bond in the amount of \$2,000, conditioned upon compliance with the provisions of this Lease, or, in the option of the Lessor, a cash deposit in the amount of \$2,000, or an irrevocable letter of credit in a form approved by Lessor drawn upon an approved bank in the same amount. All rentals, royalties and interest must be paid and all disturbance must be reclaimed to the satisfaction of Lessor prior to release of any bond. Additional bonding may be required, or reduced bonding allowed, whenever Lessor determines it is necessary, or sufficient, to ensure compliance with this Lease.

**6. RENTAL.** Lessee shall pay Lessor annually, in advance, for each acre or fraction thereof covered by this Lease, beginning with the date this Lease takes effect, an annual money rental of \$3.00 per acre. Rental terms are subject to readjustment as provided in Paragraph 8, but in no case shall it be less than two (2) dollars per acre.

**7. ROYALTY.** Lessee shall pay Lessor in money or in kind at Lessor's option a royalty on every short ton (2,000 pounds) of coal mined and produced during the term of this Lease, calculated upon the f.o.b. mine price of the coal prepared for shipment, including taxes based on production or value. Lessee shall pay a royalty of 12.5 % upon coal removed by strip, surface, or auger mining methods and a royalty of 10% for coal removed by underground mining methods. Royalty terms are subject to review and readjustment as provided in Paragraph 8, but in no case shall the royalty for the coal mined be less than ten (10) percent of the f.o.b. price of a ton prepared for shipment.

**8. READJUSTMENT OF RENTAL AND ROYALTY TERMS.** The Lessor reserves the right to readjust the rental and royalty terms of this Lease to reflect fair market value at the end of the primary term of ten (10 years) and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities.

**9. OFFSETTING PRODUCTION.** The obligation of Lessee to pay royalties under this Lease may be reduced by the Board for coal produced from any particular tract within the Lease upon a showing by Lessee to the Board that the coal is uneconomical to mine at prevailing market prices and operating costs unless Lessor's royalty is reduced. Under no circumstances may Lessor's royalty be reduced below ten (10) percent of the coal produced and sold f.o.b. the mine site, prepared for shipment, including taxes based on production or value.

**10. LESSOR NOTIFICATION AND REPORTS.** Lessee shall notify Lessor prior to the commencement of any prospecting, exploration, development or production operations. As soon as any mining operations are commenced, Lessee shall submit to Lessor, on or before the last day of each month, a royalty report and payment covering the preceding calendar month, which report shall be in such form and include such information as Lessor shall prescribe. Upon request, Lessee shall also furnish to Lessor, reports, plats, and maps showing exploration data, development work, improvements, amount of leased deposits mined, contracts for sale and any other information with respect to the land leased which Lessor may require. Lessor's point of contact for all matters related to this Lease is:

Department of Natural Resources & Conservation  
Minerals Management Bureau  
P.O. Box 201601  
1625 Eleventh Avenue  
Helena, MT 59620-1601

Lessor will notify Lessee of any subsequent change in point of contact.

**11. INSPECTION.** Representatives of the Lessor shall at all times have the right to enter upon all parts of the leased premises for the purposes of inspection, examination, and testing that they may deem necessary to ascertain the condition of the Lease, the production of coal, and Lessee's compliance with its obligations under this Lease and to review the Lessee's records relating to operations upon and administration of the lease premises. Representatives of Lessor shall also, at all reasonable hours, have free access to all books, accounts, records, engineering data, and papers of Lessee insofar as they contain information relating to the production of coal under this Lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production of coal under this Lease. Lessor may copy at its own expense any book, account, record, engineering data, papers, or agreements to which it has access pursuant to this paragraph.

**12. CONFIDENTIALITY.** Lessor agrees that Lessee may request any materials obtained by Lessor pursuant to this Lease be designated as confidential. Lessor shall agree to keep any information so designated strictly confidential if Lessor determines that confidentiality is not unlawful. Further, the parties agree that the information Lessee is obliged to provide pursuant to this Lease is only that information relating to the reasonable administration and enforcement by Lessor of the provisions of this Lease and state law.

**13. ASSIGNMENT.** This Lease may not be assigned without the prior approval of Lessor in writing. Assignments must be made in accordance with any statutes or administrative rules pertaining to assignments in effect at the time of assignment. Each Lessee executing this Lease, or accepting an assignment of an interest in this Lease, is jointly and severally liable for all obligations attributable to the entire working interest under this Lease. Assignments may not extend the expiration date of this Lease.

**14. CANCELTION.** Lessee may surrender and relinquish this Lease by giving written notice to the Lessor at least thirty (30) days prior to the anniversary date of the Lease. It is understood and agreed that the Lessor hereby reserves the right to declare this Lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of Lessee to fully discharge any of the obligations provided herein, after written notice from the Department and reasonable time fixed and allowed by it to Lessee for the performance of any undertaking or obligation specified in such notice concerning which Lessee is in default. Lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Department before the Lease may be declared forfeited or canceled.

**15. SURRENDER OF PREMISES.** Upon the termination of this Lease for any cause, Lessee shall surrender possession of the leased premises to Lessor, subject to Lessee's right to re-enter (1) for the purpose of removing all machinery and improvements belonging to Lessee, hereby granted at any time within six (6) months after the date of such termination, except those improvements as are necessary for the preservation of the deposit and access to the deposit, which improvements shall become the property of Lessor; and (2) for the purpose of complying with State and Federal laws adopted pursuant to the police power of State or Federal government. If any of the property of Lessee is not removed from the leased premises as herein provided, the same shall be deemed forfeited to Lessor and become its property.

**16. PROTECTION OF THE SURFACE, NATURAL RESOURCES, AND IMPROVEMENTS.** Lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) damaging crops, including forage, timber, or improvements of a surface owner; or (3) damaging range improvements whether owned by Lessor or by its grazing permittees or lessees. The lessee shall not pollute or deplete surface or groundwater in excess of those impacts to water allowed by state or federal law or permit. Upon any partial or total relinquishment or the cancellation or expiration of this Lease, or at any other time prior thereto when required by Lessor and to the extent deemed necessary by Lessor, Lessee shall fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, reclaim the disturbed area to a condition in keeping with the concept of the best beneficial use, including the removal of structures as and if required. Lessor may prescribe the steps to be taken and reclamation to be made with respect to the land and improvements thereon. Nothing in this section limits Lessee's obligation to comply with any applicable state or federal law, rule, regulation, or permit.

**17. TAXES.** Lessee shall pay when due all taxes lawfully assessed and levied upon improvements, output of mines, or other rights, property or assets of the Lessee.

**18. SUCCESSORS IN INTEREST.** Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors and assigns of the respective parties hereto.

**19. COMPLIANCE WITH LAWS AND RULES.** This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

**20. WATER RIGHTS.** Lessee may not interfere with any existing water right owned or operated by any person. Lessee shall hold Lessor harmless against all claims, including attorney fees, for damages claimed by any person asserting interference with a water right.

**21. MINE SAFETY.** Lessee agrees to operate the mine in accordance with rules promulgated by the Mine Safety and Health Administration for the health and safety of workers and employees.

**22. WASTE PROHIBITED.** All mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of economically minable and saleable mineral, having due regard for the prevention of waste of the minerals developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future use, and for the health and safety of workers and employees.

**23. SURRENDER OF DATA.** All geological data pertaining to the leased premises, including reports, maps, logs and other pertinent data regarding trust resources shall be given to the Lessor upon surrender, termination, or expiration of the Lease. Lessor may refuse to release bond until surrender of such data to the Lessor. All drill core unused or undamaged by testing shall be saved. Upon surrender, termination, or expiration of the lease, Lessee shall contact the State Geologist, Montana Bureau of Mines and Geology, Butte, Montana, to determine if such drill core is of interest to the State Geologist for the drill core library. Any drill core determined by the State Geologist to be of interest shall be forwarded by Lessee, at Lessee's cost, to the drill core library.

**24. WEED CONTROL.** Lessee is responsible for controlling noxious weeds on the leased premises and shall prevent or eradicate the spread of noxious weeds onto land adjoining the leased premises in consultation with any local weed control board.

**25. SURFACE OWNER AND SURFACE LESSEE RIGHTS.** Lessee shall notify the surface owner, if the surface owner is not the Lessor, and any surface lessee of the location of any facilities or access roads on the leased premises prior to their construction.

**26. DAMAGES.** Where Lessor owns the surface estate above the leased premises, Lessee shall compensate Lessor or Lessor's surface lessees or permittees for all damages to authorized improvements on the leased premises, including penalties and charges assessed by the FSA on CRP lands, as a result of Lessee's prospecting, exploration, development or mining operations. All such damages will be assessed by and paid directly to the Lessor. Lessee shall also make all payments required by law to surface owners and lessees if Lessor is not the owner of the surface estate above the leased premises.

**27. INDEMNIFICATION.** The Lessee shall protect, defend, and save the Lessor, its agents and employees harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death, which injury, death or damage, in whole or in part, arises out of or in any way results from the negligent, wanton, or willful acts or omissions of the Lessee, its contractors, agents or subcontractors.

**28. SPECIAL CONDITIONS.**

**(A) DILIGENCE.** The Lessee hereby commits to a work program on the Otter Creek Area Coal Tracts with a minimum expenditure of \$2.0 million per lease year, for a period of five (5) years following the date this Lease takes effect, and at least \$500,000 per lease year thereafter. For the purposes of this Lease commitment, the Otter Creek Area Coal Tracts includes all State and non-State coal located within the areas identified as "Tract #'s 1, 2, and 3" on the attached Exhibit A. Within 120 days following the end of each lease year, the Lessee shall provide Lessor an accounting of Work (as later defined) performed on the Otter Creek Area Coal Tracts for such lease year. Any amount in excess of the minimum expenditure amount is referred to as the "Excess Amount" and any shortfall is referred to as the "Shortfall Amount." Within 120 days following the end of each lease year, the Lessee shall pay to Lessor the amount, if any, equal to the Shortfall Amount for such lease year, less the sum of the Excess Amounts for all prior lease years (to the extent such Excess Amounts have not been previously applied against a Shortfall Amount). For purposes of calculating the minimum expenditure, the Lessee may only include costs for work directly attributable to the Otter Creek Area Coal Tracts. Work to be performed on the Otter Creek Area Coal Tracts may include, without limitation, environmental baseline studies, exploration drilling, initiation of

permitting and all permitting actions, acquisition of surface rights and access rights over or to the Otter Creek Area Coal Tracts, title curative actions, market studies, compiling mine economics, preparation of feasibility studies and any other works, study or verifiable third party expense required to commence operations for the mining of coal on the Otter Creek Area Coal Tracts (collectively, the "Work"). The accounting of Work does not include payments made to non-State Lessors for shortfalls in work program expenditures. In the event any of the Work is conducted by Lessee's employees, the actual verifiable salaries, wages and personal expenses of Lessee's employees either temporarily or permanently assigned to the development and operation of the Otter Creek Area Coal Tracts may be included in the minimum expenditure. Lessee shall not include any internal overhead of any nature in calculating the minimum expenditure. If it is anticipated that the Work conducted by Lessee's employees will exceed 50% of the minimum expenditure, the Lessee will seek Lessor's approval for such amounts over 50%. In addition, taxes and assessments Lessee pays shall not be included in calculating the minimum expenditure. Copies of all analyses, data and other information produced or compiled as a result of Lessee's work program on the Otter Creek Area Coal Tracts will be provided to Lessor within 120 days after the end of each lease year. However, such analyses, data and other information submitted to Lessor shall be subject to the confidentiality provisions of Paragraph 12 and 77-3-308, MCA.

(B) **SETTLEMENT AGREEMENT.** After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Area Coal Tracts (singly and collectively "Operations"), the Lessee or its agents in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Lessor, obtain Lessor approval of, and thereafter implement the five written Operating Plans as detailed in the attached Exhibit B of the Settlement Agreement dated February 19, 2002, between the Lessor and the Northern Cheyenne Tribe.

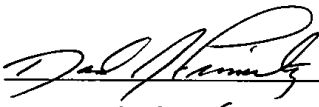
29. **NON-WARRANTY OF TITLE.** Regardless of any of the above provisions of this Lease, actual or implied, the State of Montana does not warrant title to its lands.

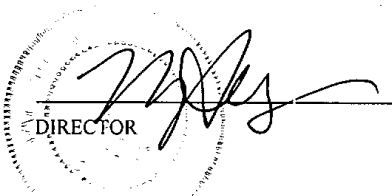
IN WITNESS WHEREOF, the parties hereto set their hands and Lessor has caused this agreement to be executed with the official seal of the State Board of Land Commissioners on this \_\_\_\_ day of APR 20 2010, 2010.

**THE STATE OF MONTANA.**  
Lessor

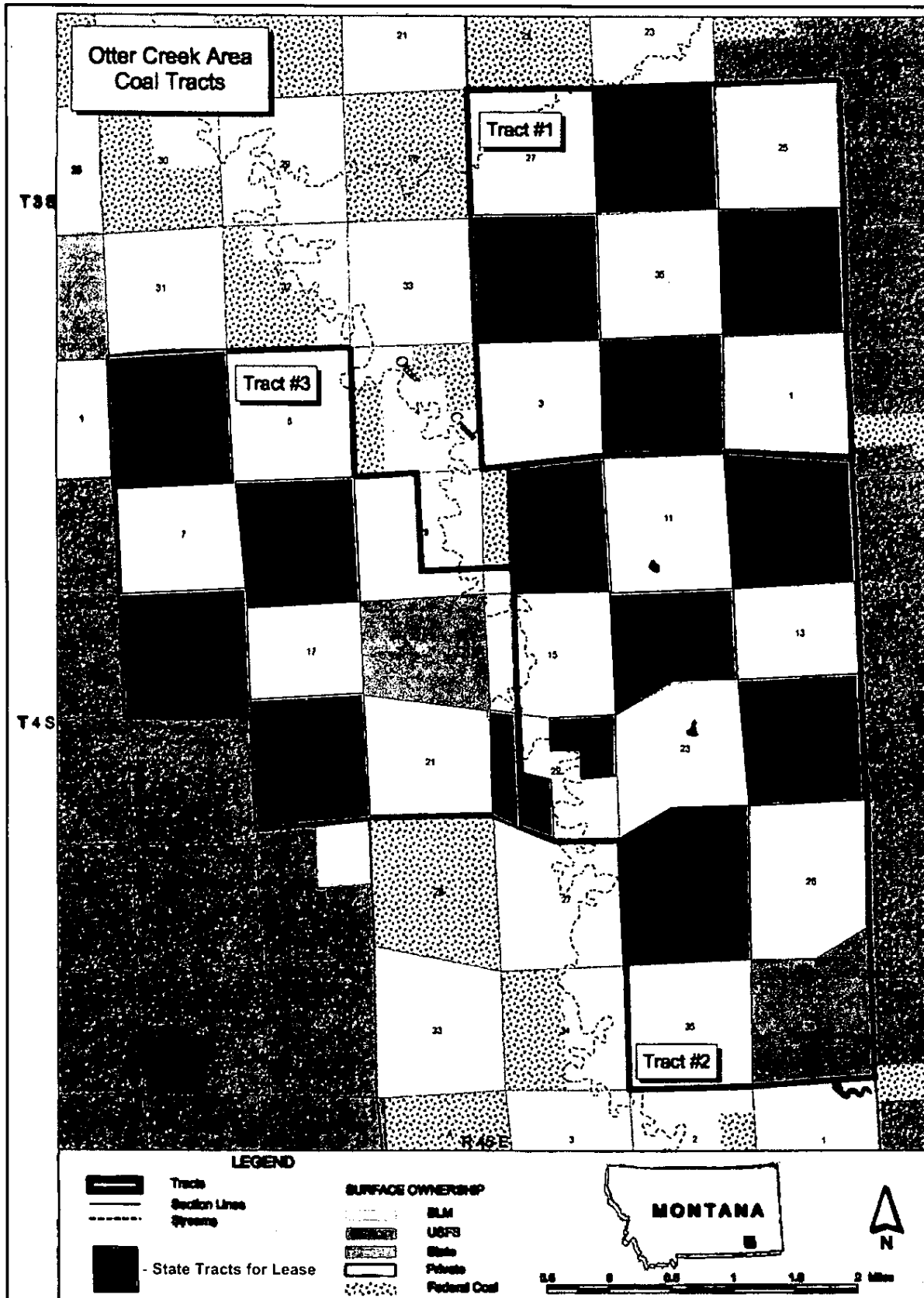
**ARK LAND COMPANY**  
Lessee

By Its State Board of Land Commissioners

By:   
Its: President

  
DIRECTOR

# EXHIBIT A



## EXHIBIT B

### Operating Plans

After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Tracts (singly and collectively "Operations"), the project operator in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Montana State Board of Land Commissioners ("Board"), obtain Board approval of, and thereafter implement, the following written Operating Plans:

1. **Employment Program.** A written Employment Program designed to provide meaningful and substantial employment opportunity in Operations, without any preferences or quotas, to enrolled members of federally-recognized Indian Tribes who resided on or near the Northern Cheyenne Reservation during the one-year period preceding their application for employment ("Indians") and to non-Indians who resided on the Reservation, in the off-Reservation communities of Ashland or Birney, or in Powder River County during the one-year period preceding their application for employment ("Other Local Residents"), to the extent such Indians and Other Local Residents are qualified and available and reside no more than 50 road miles from the Operations. The Employment Program shall address recruitment, training, hiring, promotion, reductions in workforce and termination for cause, in all categories of employment, and shall include:

- a. Programs for recruitment of Indians and Other Local Residents.
- b. Programs for training Indians and Other Local Residents, including entry-level training, on-the-job training, and training for advancement into supervisory positions.
- c. Preservation of the project operator's authority to establish reasonable, even-handed and job-validated training programs, employment criteria, and work rules for all project employees including Indians and Other Local Residents.

- d. Workshops for other project workforce to develop an awareness of relevant Indian culture and concerns and an understanding of the need for and requirements of the Employment Program.
- e. A requirement that contractors and subcontractors engaged in Operations assume and comply with all terms and conditions of the Employment Program reasonably adaptable to their own employment practices.
- f. Notification to any involved labor union of the existence of the Employment Program and the project operator's duty and intent to abide by its terms, and accommodation of the Employment Program in any union collective bargaining agreement covering Operations.
- g. Employment by the project operator of a Facilitator, who shall be a qualified and available enrolled member of the Tribe approved by the Northern Cheyenne Tribal Council and acceptable to the project operator, whose principal and primary duties shall be to: (a) serve as liaison between the project operator and the Tribe with respect to the Employment Program and the Contracting Program established under section 2 below; (b) assist in facilitating the successful implementation of the Employment Program and Contracting Program; and (c) assist in resolving any problems which may arise in implementing the Employment Program or Contracting Program.
- h. A board of Administrators, consisting of equal numbers of Administrators separately designated by the Tribe and the project operator, which shall monitor compliance with and serve as a forum to discuss and resolve by agreement any disputes regarding the interpretation or implementation of the Employment Program or the Contracting Program.

2. **Contracting Program.** A written Contracting Program designed to provide meaningful and substantial opportunity, without preferences or quotas, to qualified and available businesses majority-owned and controlled by the Northern Cheyenne Tribe or its members ("Tribal Contractors"), to obtain contracts and subcontracts for services or goods in the conduct of Operations at competitive prices. The Contracting Program shall include:

- a. A certification procedure under which a business entity applying for the status of Tribal Contractor must seek certification from the Administrators in the following two respects:
  - i. as majority-owned and controlled by the Tribe or Tribal Members; and
  - ii. as capable of competently providing particular kinds of contract services or goods.
- b. Notice to certified Tribal Contractors of Operations contracts and subcontracts to be awarded for which they are qualified.
- c. A requirement that project contractors and subcontractors involved in Operations assume and comply with all terms and conditions of the Contracting Program reasonably adaptable to their own project contracting activities.

3. **On-Reservation Conduct.** A written On-Reservation Conduct Program designed to encourage employees and truckers involved in Operations, while on the Northern Cheyenne Reservation, to comply with all relevant standards of conduct generally applicable to Northern Cheyenne Tribal members on the Reservation.

4. **Environmental Monitoring.** To the extent not independently required by applicable federal or State environmental law or regulations, a written Environmental Monitoring Program for state-of-the-art monitoring of air quality, visibility, water quality and biological resources on the Northern Cheyenne Reservation which may be affected adversely by Operations, including:

- a. Baseline monitoring for at least one year before the initiation of any surface disturbing Operations.
- b. Ongoing monitoring thereafter throughout the conduct of Operations, and thereafter until the completion of all required reclamation on the lands on which Operations were conducted and the release of all related reclamation bonds by regulatory agencies.



- c. Training and employment of qualified and available Indians to assume responsibility, to the fullest extent feasible, for the operation of the monitoring programs on the Reservation.
- d. In addition, full compliance by the project operator with all applicable federal and State environmental laws and regulations.

5. **Cultural Resources.** To the extent not independently required by applicable federal or State law or regulations, a written Cultural Resources Program designed to avoid disturbance or damage to Northern Cheyenne historic, cultural, religious and burial sites or items, including plants having cultural or religious significance, in the conduct of Operations, including:

- a. A program carried out in consultation with the Tribe, to identify, record, and protect, in accordance with Northern Cheyenne standards and protections, all Northern Cheyenne historic, cultural, religious and burial sites on the lands covered by the Lease.
- b. Re-burial, in consultation with the Tribe and in accordance with all Northern Cheyenne standards, of all Northern Cheyenne human remains and funerary objects jeopardized or disturbed by Operations.
- c. In addition, full compliance by the project operator with all applicable federal and State laws and regulations that protect Northern Cheyenne historic, cultural and religious interests and values implicated by Operations.

\* \* \* \*

kw:wpdocs:0065:  
OtterCreekSettlement.AGM-Exh-B-Revised-2-15-02:  
0065.09642